

~~11.28.23~~ 1st Reading
~~12.12.23~~ 2nd Reading
~~12.22.23~~ 3rd Reading
12.22.23 Under Suspension
Adopted

RESOLUTION NO. 2023-44

INTRODUCED BY MAYOR AND COUNCIL AS A WHOLE

**A RESOLUTION AUTHORIZING THE MAYOR TO
EXECUTE AN AGREEMENT WITH DCOMM, INC FOR THE PROVISION OF A JOB
RETENTION AND JOB CREATION TAX CREDIT AND DECLARING AN
EMERGENCY**

WHEREAS, DCOMM, Inc, has approached the Village of Oakwood to explore some form of economic assistance so that it may maintain its present operations and also expand its operations located at 24370 Broadway Ave. within the Village of Oakwood, improving the economic climate of Oakwood; and

WHEREAS, in lieu of any form of real estate tax abatement, DCOMM has solicited a Job Retention and a Job Creation Tax Credit from the Village of Oakwood; and

WHEREAS, R.C. Sec. 718.15 permits municipalities to grant job creation tax credits while R.C. Sec. 718.151 permits municipalities to grant job retention tax credits;

NOW THEREFORE, BE IT RESOLVED by the Council of the Village of Oakwood, County of Cuyahoga, and State of Ohio that:

SECTION 1. The Mayor be and is hereby authorized to enter into a Job Retention and Job Creation Tax Credit Agreement with DCOMM, Inc in the form substantially similar to the one attached hereto, expressly made a part hereof by reference, and marked Exhibit "A".

SECTION 2. The Finance Director be and is hereby authorized to transmit the foregoing Agreement to the appropriate agencies for application of the credit.

SECTION 3. This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the inhabitants of the Village, the reason for the emergency being that the same relates to the creation of job opportunities and tax revenues for the Village for which time is of the essence, therefore, provided it receives two-thirds (2/3) of the vote of all members of Council elected thereto, said Resolution shall be in full force and effect immediately upon its adoption by this Council and approval by the Mayor, otherwise from and after the earliest period allowed by law.

PASSED:

12.22.2023

Tanya Joseph
Tanya Joseph, Clerk of Council

Johnnie A. Warren
Johnnie A. Warren, President of Council

Presented to the Mayor 12.28.2023

Approved: 12.28.2023

Gottschalk
Mayor Gary V. Gottschalk

I, Tanya Joseph, Clerk of Council of the Village of Oakwood, County of Cuyahoga, and State of Ohio, do hereby certify that the foregoing Resolution No. 2023-44 was duly and regularly passed by this Council at the meeting held on the 22nd day of DEC. 2023.

Tanya Joseph
Tanya Joseph, Clerk of Council

POSTING CERTIFICATE

I, Tanya Joseph, Clerk of Council of the Village of Oakwood, County of Cuyahoga, and State of Ohio, do hereby certify that Resolution No. 2023-44 was duly posted on the 29th day of December, 2023, and will remain posted as provided in the Charter of the Village of Oakwood.

Tanya Joseph
Tanya Joseph, Clerk of Council

DATE: 12.29.2023

EXHIBIT A

JOB RETENTION AND JOB CREATION TAX CREDIT AGREEMENT

This Agreement made and entered into this ____ day of _____, 2023, between the Village of Oakwood, Ohio, an Ohio municipal corporation, with its main offices located at 24800 Broadway Avenue, Oakwood Village, Ohio 44146 (hereinafter referred to as "Village" or "Oakwood") and DCOMM, Inc., a Texas corporation, with its main offices in Ohio located at 24370 Broadway Ave., Oakwood Village, Ohio 44146 (hereinafter referred to as "Company").

WITNESS ETH:

WHEREAS, Oakwood has encouraged the creation and retention of job opportunities throughout the Village; and

WHEREAS, the Company is desirous of maintaining its present operations and expanding its operations located at 24370 Broadway Ave., Oakwood Village, Ohio 44146, to retain and create employment opportunities (hereinafter sometimes referred to as the "Project") within the boundaries of the Village of Oakwood, provided that the appropriate development incentives are available to support the economic viability of said Project; and

WHEREAS, the Village of Oakwood is desirous of providing the Company with incentives available for the development of the Project; and

WHEREAS, the Mayor has investigated this matter and has recommended the same to Oakwood Village Council on the basis that the Company is qualified by financial responsibility and business experience to maintain and create employment within the Village of Oakwood and improve the economic climate of Oakwood;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained and the benefit to be derived by the parties from the execution hereof, the parties herein agree as follows:

1. Description of the Project.
 - A. The Company, is among the largest telecom installation and construction contractors in the U.S. providing residential installations, commercial installations, construction, engineering, network installations, network monitoring and ancillary services and will be supporting the Northeast Ohio market area out of its Oakwood Village office located at 24370 Broadway Ave. with the main customer of this office as of the present being Charter Communications/ Spectrum
2. Job Creation.
 - A. In order to receive the grants set forth below in Section 3, the Company must maintain or increase the present number of employees at its foregoing operations and remain in the Village of Oakwood.

3. Issuance of Grant.

- A. The Village hereby grants a credit of one hundred percent (100%) against municipal income taxes owed by the Company said credit being based upon the income tax revenue derived by the Village of Oakwood from employees retained by the Company from and after the date of this Agreement.
- B. The Village further grants a credit of one hundred percent (100%) against municipal income taxes owed by the Company based upon the creation of additional income tax revenue derived by the Village of Oakwood from employees hired by the Company after the date of this Agreement.
- C. The foregoing grants shall be granted for three successive tax years commencing with the first date set forth hereinbelow and shall be limited to a maximum of one hundred fifty thousand and 00/100 Dollars (\$150,000.00) per year.
- D. To receive a grant in any given year, the Company must make a written application to the Village through the Mayor for such grant and provide the necessary documentation in support of its application. Based upon the information supplied to the Mayor, the Mayor shall recommend in writing to the Village Council whether the grant should be given for any such year. Based upon Council's review of the information and documentation supplied by the Company together with the recommendation of the Mayor, Council shall either approve or deny such grant based upon compliance by the Company with the criteria set forth in this Agreement. This application must be made no later than April 1st of any year for which a grant is in effect.

4. Grant Payments.

- A. Initial Grant Payment. The initial grant payment shall be made by June 30, 2024, provided that the Company files its Reconciliation of Village Income Tax Withheld RITA Form 17 by February 28, 2024.
 - B. Timing of Annual Grant Payments. Annual grant payments shall be made by June 30th of each subsequent year, provided that the Company timely files its application and Reconciliation of Village Income Tax Withheld RITA Form 17 on the dates specified hereinabove. If the Company requests an extension for filing of its RITA Form 17, the Village shall make the grant payment within three months of the extended filing date provided that the Company has complied with all other terms of this Agreement. It is the responsibility of the Company to advise the Mayor of any RITA Form 17 filing extension.
5. Information for Annual Review. The Company shall timely provide to the Village any information reasonably required by the Village to evaluate the Company's compliance with this Agreement.

6. Certification as to Payments of Taxes. The Company certifies that, at the time this Agreement is executed and during any time while this Agreement is in effect, the Company does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State of Ohio, and does not owe delinquent taxes for which the Company is liable under Chapters 5733, 5735, 5739, 5741, 5743, 5747, or 5753 of the Ohio Revised Code, or, if such delinquent taxes are owed, the Company currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof, has filed a petition in bankruptcy under 11 U.S.C.A. 101, et seq., or such a petition has been filed against the Company. For the purposes of this certification, delinquent taxes are taxes that remain unpaid on the last day prescribed for payment without penalty under the Chapter of the Revised Code governing payment of those taxes.
7. Non-Discrimination in Hiring. By executing this agreement, the Company is committing to follow non-discriminatory hiring practices acknowledging that no individual may be denied employment solely on the basis of race, religion, sex, disability, color, national origin, ancestry, or any other classification prohibited by state or federal law. Company further agrees to use a good-faith effort in giving preference in hiring to Oakwood Village residents provided they are otherwise qualified for the position available.
8. Transfer and Assignment. This Agreement is not transferable or assignable without the express, written approval of Oakwood Village Council. The Village acknowledges that it would be unreasonable to withhold such consent in the event of a proposed transfer or assignment to any parent, subsidiary or affiliate of the Company or to any third party so long as the proposed transferee or assignee adequately and sufficiently demonstrates to the Village, to the Village's reasonable satisfaction, its financial ability, business experience and intentions to continue its operations of the foregoing facility in a manner similar to that of the Company in all pertinent respects.
9. Termination of Grant.
 - a. If the Company fails to submit required information and/or reports as set forth above, the Village may terminate or modify this Agreement and deny or modify future grants heretofore granted from the date of the Company's breach or default. The Village's termination or modification of this Agreement may be instituted only if the Company fails to cure any breach of any term of this Agreement as determined by the Village within ten (10) days of receiving written notice of such failure from the Village or, if cure of the breach cannot reasonably be completed within ten (10) days, the Company has not made a good faith start of the cure, and/or has not diligently pursued same.

- b. Oakwood may terminate or modify this Agreement and may also require the repayment of the full amount of grant payments awarded under this Agreement, if the Village determines that the certification as to delinquent taxes required by this Agreement is fraudulent or untrue or if the Company otherwise breaches this Agreement.
 - c. Oakwood may terminate or modify this Agreement and may also require the repayment of 100% of the full amount of the grant payments awarded under this agreement, upon the occurrence of the following:
 - 1. The Company vacates the leased premises located at 24370 Broadway Ave. or terminates its operations at the leased premises altogether during the term of this Agreement.
 - d. In determining whether or not to modify this Agreement the Mayor of the Village of Oakwood and Village Council shall consider the effect of market conditions on the Company's project and whether or not the Company is closing its operations, relocating its operations outside the Village of Oakwood or relocating its operations within the Village of Oakwood. After making the determination, the Mayor shall recommend to Village Council any modifications to this Agreement. The Village Council may adopt or modify this recommendation at its discretion. The Company agrees to reimburse the Village of Oakwood any grant refunds as provided above within fifteen (15) days of the date of the notice to refund grant funds is provided to the Company as detailed herein.
10. Any notices, statements, acknowledgments, consent approvals, certificates, or requests required to be given on behalf of either party shall be made in writing addressed as follows:

If to the Village to: Village of Oakwood
24800 Broadway Avenue
Oakwood Village, Ohio
44146 Attn: Mayor

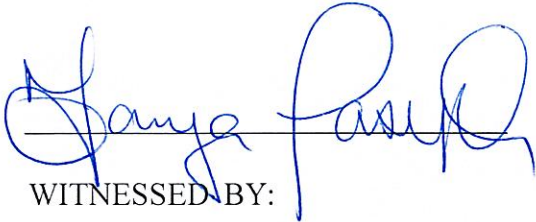
With a copy to: James A. Climer
Director of Law - Village of Oakwood
34305 Solon Rd., Ste. 100
Solon, OH 44139
440.249.7906 X 137
jclimer@mnlaw.com

If to the Company to: DCOMM, Inc.
24370 Broadway Ave.
Oakwood Village, Ohio
44146

All notices required or authorized herein shall be in writing and shall be deemed to have been duly given by one party if delivered personally, faxed with receipt acknowledged, mailed by registered or certified mail, delivered by a recognized commercial courier, or otherwise actually received by the other party at the address set forth above.

- 11. Condition Precedent. The Company and Oakwood acknowledge that this Agreement must be approved by formal action of the legislative authority of the Village of Oakwood as a condition for the agreement to take effect.

WITNESSED BY:



WITNESSED BY:

VILLAGE OF OAKWOOD

By:

Gary V. Gottschalk, Mayor
Village of Oakwood

DCOMM, Inc.

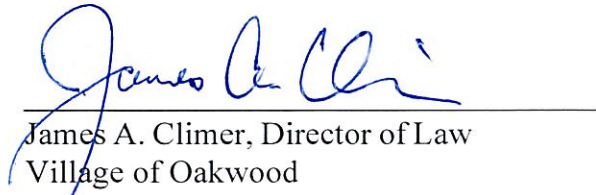
By:

(Printed Name) (Title)

WITNESSED BY:

WITNESSED BY:

Approved as to legal form:



James A. Climer, Director of Law
Village of Oakwood

This Agreement has been authorized by Resolution No. 2023-44, adopted the 22nd day of December 2023.